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PWS CONTROL OF ZONE I WITHIN PUBLICLY OWNED LANDS

BRP Policy # 95-04
August 7, 1996

Policy, SOP or Guidance # 9504

Policy 95-04 applies where the Zone I is located within property owned by a federal, state or municipal entity ("governmental entity") and used for conservation, water supply or other purposes. In such cases, public water suppliers (PWS) may meet the requirement in 310 CMR 22.21(1)(b)5. for Zone I ownership or control through use of the following instruments (in order of preference):

1. **EASEMENT AND CONSERVATION OR WATERSHED RESTRICTION:**

(a) **Easement:** A grant to PWS of a right of access to and across Zone I in order to install, operate, monitor, repair, maintain a public water supply system within Zone I and perform other activities within Zone I necessary for the system's compliance with 310 CMR 22.00 **AND** the right to install, operate, monitor, repair and maintain a PWS system and perform other activities within Zone I necessary for the system's compliance with 310 CMR 22.00; **AND**.

(b) **Conservation Restriction or Watershed Preservation Restriction:** The restriction is imposed by governmental entity on property located within Zone I restricting activities and uses to be made of such property and runs in favor of PWS. The easement and the restriction may be created in one document.

Note: In order for the restriction to run with the land, the PWS must either own land that is benefitted by the restriction (e.g., adjacent land), or be a "governmental body" within the meaning of M.G.L.c. 184, s.26 (in which case, owning benefitted land is not required).

2. **EASEMENT AND RESTRICTION (BY AGREEMENT):**

(a) A grant to PWS of a right of access to Zone I in order to install, operate, monitor, repair and maintain a PWS within Zone I and to perform other activities necessary for system's compliance with 310 CMR 22.00 and right to install, operate, monitor, repair and maintain a PWS system within Zone I and perform other activities within Zone I necessary for system's compliance with 310 CMR 22.00; **AND**

(b) An **agreement** from governmental entity in favor of PWS to restrict activities and uses made of property located within Zone I so as to be consistent with the use of the area as a public water supply (compliance with 22.21(1)(b)5.).

Note: A restriction by agreement will be required in cases where the PWS either does **not** own land that is benefitted by the restriction (e.g., adjacent land), or is **not** a "governmental body" within the meaning of

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3. **LONG TERM LEASE:**

A long term lease from the governmental entity, as lessor, to PWS, as lessee, whereby PWS has possession of property comprising the Zone I and right to install, operate, monitor, repair and maintain a PWS system within Zone I and perform other activities necessary for system's compliance with 310 CMR 22.00. The minimum time period for such a lease would be 30 years. Such a long term lease shall be renewable and shall prohibit any activity inconsistent with the use of the area as a public water supply. The long-term lease shall not be renewed if the well is no longer serving as a source a public drinking water.

4. **CONTRACTUAL AGREEMENT OR "MOU":**

A contractual agreement or memorandum of understanding ("MOU") between the PWS and the governmental entity owning the property, providing for :

(a) an agreement giving PWS access to and across Zone I in order to install, operate, monitor, repair and maintain a PWS system within a Zone I and perform other activities within a Zone I necessary for system's compliance with 310 CMR 22.00; and right to install, operate, monitor, repair and maintain a PWS system within Zone I and perform other activities within Zone I necessary for system's compliance with 310 CMR 22.00; AND

(b) the restriction of all activities and uses within Zone I inconsistent with the use of the area as a public water supply, and containing provisions regarding renewal of MOU.

Note 1. DEP approval of the instrument establishing control must be obtained before construction of the well begins. Early consultation with regional DEP office (before execution of the instrument) is strongly encouraged.

Note 2. Some of the options for transfer of property and/or change of use of publicly owned property may require legislative action. For example, a change in use of lands subject to Article 97 of the Massachusetts Constitution requires legislative approval. When legislation exists regarding the particular site, a copy of such legislation should be submitted with the instrument establishing PWS control. Such legislation should provide that the property interest conveyed will revert to the governmental entity if, after a predetermined time, the property is no longer used for the purposes for which it was conveyed.

Note 3. PWS interested in siting wells on state-owned land should refer to the "EOEA Article 97 Land Disposition Policy". Individual state agencies may also have their own land disposition policies, such as the "Department of Environmental Management Policy & Procedures for the Disposition of Land, Water or Interests Therein" or the "Department of Fisheries, Wildlife and Environmental Law Enforcement Land Disposition Policy." PWS interested in well sites with a Zone I with an agricultural Preservation Restriction (APR) should be aware of the Department of Food and Agriculture's document entitled, "Considerations for Determining When to Support a Release a Property From an APR".

Note 4. DEP recommends that PWS obtain subordination agreement(s) from any prior interest holders.

Note 5. Restrictions on activities within Zone I need not apply to allowable passive recreational uses as provided for in Policy 94-03A (Section 3).

APPROVED:

EFFECTIVE:

Arleen O'Donnell, Assistant Commissioner
Bureau of Resource Protection

